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JAMES BONINI
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

UNITED STATES OF AMERICA,
PLAINTIFF,

V.

THE SCOTTS MIRACLE-GO COMPANY

CASE NO. 2:12CR24
JUDGE Graham

GOVERNMENT'S PLEA AGREEMENT SUBMISSION
OF ELEMENTS AND PENALTIES FOR
7 U.S.C. §§ 136j(a)(1)(A), 136j(a)(1)(E), 136j(a)(2)(G), 136j(a)(2)(M)

DESCRIPTION OF SCOTTS' OFFENSES
(As charged in the Information)

All crimes charged in the Information are violations of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136, et seq., (FIFRA)

1. ELEMENT: 7 U.S.C. § 136j(a)(2)(G)
(Count 1: Pesticide Misuse)

SCOTTS knowingly used the registered pesticides Storcide II and Actellic 5E in a manner contrary to their labels.

First: The defendant knowingly used a pesticide registered with the United States Environmental Protection Agency (EPA),

Second: The defendant did so in a manner inconsistent with the pesticide's EPA-approved labeling;

Third: That said conduct occurred in whole or in part at or about the time alleged, in the Eastern Division of the Southern District of Ohio.

2. PENALTIES

Classification of the FIFRA Crimes: Class A Misdemeanors

Under 7 U.S.C. § 136/(b)(1)(A), any pesticide registrant, applicant for a pesticide registration, or any pesticide producer who knowingly violates any provision of FIFRA is subject to penalties authorized for a class A misdemeanor.

Under 18 U.S.C. § 3571(c), a corporation convicted of a class A misdemeanor not resulting in death is subject to a fine of not more than \$200,000 and a term of probation up to 5 years.

3. Element: 7 U.S.C. § 136j(a)(2)(M)

(Counts 2 - 6: Falsification of Pesticide Registration Documents)

SCOTTS knowingly falsified all or part of applications for pesticide registration, information submitted to EPA pursuant to 7 U.S.C. § 136e (registration requirements for pesticide manufacturers), or records required, under FIFRA, to be maintained by a regulated party, or any report filed under the statute.

- First: The defendant knowingly materially falsified a document,
- Second: The defendant knew the document was an application for pesticide registration, information submitted to EPA for pesticide registration, a record required, under FIFRA, to be maintained by a regulated party, or a report filed under the FIFRA statute;
- Third: That said conduct occurred in whole or in part at or about the time alleged, in the Eastern Division of the Southern District of Ohio.

4. PENALTIES

Classification of the FIFRA Crimes: Class A Misdemeanors

Under 7 U.S.C. § 136/(b)(1)(A), any pesticide registrant, applicant for a pesticide registration, or any pesticide producer who knowingly violates any provision of FIFRA is subject to penalties authorized for a class A misdemeanor.

Under 18 U.S.C. § 3571(c), a corporation convicted of a class A misdemeanor not resulting in death is subject to a fine of not more than \$200,000 and a term of probation up to 5 years.

5. Element: 7 U.S.C. § 136j(a)(1)(E)
(Counts 7 - 8: Distribution of a Misbranded Pesticide)

SCOTTS knowingly sold or distributed misbranded pesticides. A pesticide is misbranded if it bears any statement that is false or misleading, if it fails to contain specified directions for use, or if the label does not contain necessary warnings or other information material to EPA's registration of the pesticide. 7 U.S.C. § 136(q)(1).

- First: The defendant knowingly sold or distributed a pesticide registered by EPA,
- Second: The defendant knew the pesticide's label or advertisements for it contained a statement that is false or misleading, or if the label fails to contain specified directions for use, or the label fails to contain a necessary warning or other information material to EPA's registration of the pesticide;
- Third: That said conduct occurred in whole or in part at or about the time alleged, in the Eastern Division of the Southern District of Ohio.

6. PENALTIES

Classification of the FIFRA Crimes: Class A Misdemeanors

Under 7 U.S.C. § 136l(b)(1)(A), any pesticide registrant, applicant for a pesticide registration, or any pesticide producer who knowingly violates any provision of FIFRA is subject to penalties authorized for a class A misdemeanor.

Under 18 U.S.C. § 3571(c), a corporation convicted of a class A misdemeanor not resulting in death is subject to a fine of not more than \$200,000 and a term of probation up to 5 years.

7. Element: 7 U.S.C. § 136j(a)(1)(A)
(Counts 9 - 11: Distribution of an Unregistered Pesticide)

SCOTTS knowingly sold or distributed a pesticide that was not registered by EPA, under 7 U.S.C. § 136a, or otherwise authorized by EPA for distribution and use.

- First: The defendant knowingly sold or distributed a pesticide;
- Second: The defendant knew the pesticide was not registered by EPA or otherwise authorized by EPA for distribution and use;
- Third: That said conduct occurred in whole or in part at or about the time alleged, in the Eastern Division of the Southern District of Ohio.

8. PENALTIES

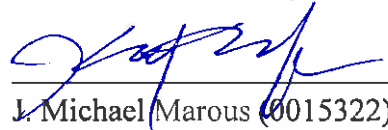
Classification of the FIFRA Crimes: Class A Misdemeanors

Under 7 U.S.C. § 136l(b)(1)(A), any pesticide registrant, applicant for a pesticide registration, or any pesticide producer who knowingly violates any provision of FIFRA is subject to penalties authorized for a class A misdemeanor.

Under 18 U.S.C. § 3571(c), a corporation convicted of a class A misdemeanor not resulting in death is subject to a fine of not more than \$200,000 and a term of probation up to 5 years.

Respectfully submitted,

CARTER M. STEWART
United States Attorney

A handwritten signature in blue ink, appearing to read "J. Michael Marous", is written over a horizontal line.

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